

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HALO CREATIVE & DESIGN LIMITED,)	
et al.,)	
)	
Plaintiffs/Counter-Defendants,)	
)	
v.)	No. 14 CV 08196
)	
COMPTOIR DES INDES, INC., et al.,)	
et al.,)	Chicago, Illinois
)	January 22, 2018
Defendants/Counter-Plaintiff.)	9:20 a.m.

EXCERPT TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE HARRY D. LEINENWEBER

APPEARANCES:

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1 (Proceedings heard in open court:)

2 THE CLERK: 14 C 8196, Halo versus Creative Design.

3 THE COURT: Appearances?

4 MR. HARRIS: Good morning, your Honor. Richard
5 Harris, Barry Horwitz, and Jacqueline Brousseau on behalf of
6 the plaintiffs, the Halo Creative & Design plaintiffs. And
7 with us, your Honor, from Halo is, first of all, Timothy
8 Oulton who's sitting at the end of the table, its CEO and
9 creative director, as well as Ms. Emily Haslam, their general
10 counsel and business director and shareholder, also from the
11 Halo companies.

12 THE COURT: How does he pronounce his name?

13 MR. HARRIS: Oulton.

14 THE COURT: Timothy --

15 MR. HARRIS: Timothy Oulton, O-u-l-t-o-n, Oulton.

16 THE COURT: Oulton?

17 MR. HARRIS: Yes.

18 THE COURT: Okay.

19 MR. WARR: Good morning, your Honor. Alastair Warr
20 of Fisher Broyles on behalf of the defendant, CDI Furniture.
21 With me at my counsel table is my partner Brad Nelson and Mark
22 Abell, who is our electronic evidence assistant. David
23 Ouaknine, who is the CEO of CDI, will be with me at counsel
24 table as well.

25 THE COURT: That was the question I had. You

1 pronounce it Ouaknine, like "W"?

2 MR. WARR: Yes, your Honor.

3 THE COURT: Okay. Thank you. A couple of things.
4 The first thing we should take up is the motion to -- for
5 leave to appeal. As I understand, the basis is that there was
6 a belief -- excuse me, the belief of the defendant that the
7 Court did not expressly rule on the question of originality.
8 And I've gone over the summary judgment opinion, and on Pages
9 37 through 39, we did discuss the issue of originality.

10 And the Court was aware of the fact that the crystal
11 chandelier design and the Odeon design were based on older
12 chandeliers, CDI's statement of material facts 17 and 61. And
13 obviously, Halo cannot copyright the features copied from
14 antique chandeliers from the past.

15 However, the summary judgment opinion found that the
16 independently created features Halo added or removed from
17 these antique chandeliers created an original expression.
18 Those features are copyrightable. The Court could have been
19 more explicit, but at the end of its section on separability,
20 the Court notes that the copyright will only attach to
21 specific original expression of the work.

22 Additionally, in its section on originality, the
23 Court found that certain features of the work at issue were
24 independently created and sufficiently original for
25 protection. Specifically, on the opinion on Page 37, to be

1 clear, the concepts behind Halo's furniture and lighting
2 fixtures are not copyrightable, but the idea is not protected
3 but the original expression of the idea is. And that's from
4 *JCW Investments, Inc., versus Novelty, Inc.*

5 The Court held that specific features discussed above
6 merit copyright protection. However, Halo cannot prevent
7 another designer from creating a work inspired by a World War
8 II airplane or a modern version of an old chandelier.
9 Originally, chandeliers are not novel. Certainly -- and this
10 is on Page 39. Chandeliers are not novel, but they do not
11 have to be novel to merit copyright protection. Originality
12 does not signify novelty. A work may be original even though
13 it closely resembles other works so long as the similarity is
14 fortuitous, not the result of copying.

15 That was pretty clear from the *Star Athletica* case
16 which involved the use of various triangles and letters and
17 things of that nature which, obviously, were not in and of
18 themselves original, but the idea was that they were put
19 together to make an original design. So the short of the
20 matter is that the motion for leave to appeal is denied.

21 Now, the next order should be, I think, to -- for the
22 Court to rule on the motions in limine. And I would ask you
23 to listen. This is a -- I'm going to give a summary of the
24 case.

25 Plaintiffs, collectively Halo, alleges that its

1 design patents, trademark, and copyright of various lighting
2 fixtures and household furniture were infringed by defendants,
3 collectively CDI. The following design patents, trademarks,
4 and copyrights are at issue. Note that some have been
5 stipulated to or removed by summary judgment.

6 One, Halo's U.S. Design Patent D655,526 entitled
7 "Armchair" and D655,100 entitled "Seating furniture," the '100
8 patent. CDI stipulated to these two patents being valid and
9 enforceable. CDI stipulated to the fact that the vintage
10 leather chair and Aero chair infringed Halo's '526 patent.
11 CDI stipulated to the fact that its Eaton three-seater and
12 Eaton one-seater infringed Halo's '100 patent. Damages were
13 left for trial.

14 Two, Halo's unregistered trademark rights in the mark
15 "Odeon;" A, CDI stipulated to this trademark being valid and
16 enforceable; B, CDI stipulated that the lighting fixtures CDI
17 sold incorporated the Odeon brand name and infringed Halo's
18 trademark, and then damages were left for trial.

19 Three, Halo's copyrights in its original product
20 designs for 22 copyrighted works: The Court ruled on summary
21 judgment that several of these works were not protected by
22 copyright. Thus, only the following works are at issue for
23 trial: A, furniture: Aviator Tomcat chair; Aviator Valkyrie
24 desk; 3, Mars chair; 4, Georgian architectural dining table;
25 5, Georgian architectural mirror. B, lighting fixtures: 1,

1 Odeon lighting fixtures; 2, Zigzag lighting fixtures; 3, Gyro
2 lighting fixtures; 4, crystal chandeliers.

3 And then there are state law claims.

4 The Court granted Halo's summary judgment on CDI's
5 counterclaims for attempted monopolization, sham litigation --
6 that's Count 2 -- and tortious interference with CDI's
7 business expectations and economic advantages, Counts 3 and 4,
8 so these issues are no longer needed to be decided at trial.

9 There are nine -- plaintiff had nine motions in
10 limine and defendants have one *Daubert* motion regarding
11 damages. And I will now proceed first with plaintiff's
12 motions in limine, 1 through 9.

13 1, Halo's motion to exclude reference to or argument
14 on similar infringing goods sold by third parties. The
15 argument is that lack of foundation, hearsay, documents not
16 produced during discovery. Evidence at issue: Copies of web
17 pages showing non-parties selling versions of Halo's designs.
18 These copies were attached to CDI's expert report.

19 CDI's response: "The documents are not inadmissible
20 hearsay. Even if they were, our expert relied on these
21 documents. The evidence was not expressly requested during
22 discovery, but it was produced during expert discovery, well
23 before the expert's deposition."

24 The ruling is that that motion is denied. CDI's
25 cases hold that a web page printout is not hearsay if the

1 printout is being offered to prove what a web page looked like
2 on a certain day, not the underlying facts. If you find that
3 CDI's printouts are showing what a customer would see
4 searching for furniture, not what was actually available, then
5 this is not hearsay.

6 However, even if it was offered for the truth of the
7 matter, the expert may rely on it, Rule 703, and this evidence
8 is more probative than prejudicial in helping the jury weigh
9 the opinion of Halo's expert. Halo's expert makes the
10 assumption in calculating damages that if the customer bought
11 CDI's infringing product, they would have bought Halo's
12 product -- did I say that right?

13 Halo's expert makes the assumption in calculating
14 damages that if the customer bought CDI's infringing product,
15 they would not have bought Halo's product. Instead, CDI's
16 wrongful conduct -- or they would have bought Halo's product
17 but for CDI's wrongful conduct. This evidence should be
18 weighed in evaluating that assumption. Foundation for the web
19 pages can be ruled on at trial, but note that it isn't a
20 difficult foundation to establish.

21 2, the motion to exclude reference to or argument on
22 Timothy Oulton's alleged outburst. Evidence at issue:
23 Mr. Oulton, Halo's founder, allegedly went to a trade show and
24 saw CDI's infringing furniture and purportedly went ballistic,
25 started screaming and threatening the sales reps and the

1 company. He had to be removed by security. Mr. Oulton will
2 be testifying at the trial.

3 CDI's response, that the arguments go to the weight
4 rather than admissibility and is relevant to 3 and 4 of the
5 counterclaims which have been disposed of.

6 This is granted. This evidence is irrelevant because
7 we granted the summary judgment motion on Counts 3 and 4.
8 Thus, evidence of Mr. Oulton's behavior at a trade show is
9 irrelevant.

10 3, motion to exclude reference to or argument on
11 Halo's alleged attempted monopolization. This is granted.
12 This is evidence because I granted the summary judgment.
13 However, the ruling does not bar factual references to the
14 size of the company or other background information.

15 4, motion to exclude reference to or argument on
16 Halo's demand letters, CDI's alleged lost business purportedly
17 caused by Halo, or Halo's alleged intentional interference
18 with prospective economic advantage and business expectancy.
19 This is granted because we had ruled on the summary judgment,
20 and those issues are no longer in the case.

21 5, motion to exclude reference to or argument on
22 CDI's purported per-unit costs and claims that certain sales
23 were never made or were made to non-U.S. customers. The
24 basis: Reliability of the evidence.

25 Evidence at issue: CDI's expert opinions are based

1 on data from a master Excel spreadsheet that compiled large
2 amounts of data from CDI invoices and other business
3 documents. Halo claims that this spreadsheet was not reliable.

4 CDI's response: Experts may rely on data provided by
5 other -- by another, including financial summaries; in this
6 case, an Excel spreadsheet of invoice data provided by CDI to
7 its expert. Halo had the opportunity to move to compel all of
8 the underlying documents that went into the spreadsheet during
9 discovery and chose not to do so.

10 The motion is denied. The expert may rely on data
11 provided to her by CDI and testify to the factual assumptions
12 that her testimony is based on. The man who created the
13 spreadsheet is a witness at trial, and Halo will be able to
14 cross-examine him as well. The reliability of the underlying
15 facts can be evaluated by the jury at trial.

16 Review of case law supports CDI's argument. In
17 *Hannah's Boutique versus Surdej*, Judge St. Eve denied a motion
18 to strike an expert opinion based on sales spreadsheets. Just
19 as here, the movant had the opportunity to question the expert
20 about the data during depositions. Halo's arguments about the
21 reliability of the data can be argued at trial.

22 6, the motion to exclude reference to or argument as
23 to CDI's allocated fixed costs. Basis: Reliability of the
24 evidence, hearsay. Evidence at issue: The same spreadsheet
25 as No. 5.

1 Fixed costs are deductible if the evidence shows that
2 the cost is attributable to the infringing item. Whether the
3 cost is attributable is a question of fact for the jury.
4 Thus, Halo's arguments go to the weight of the evidence, not
5 its admissibility. The same argument as to MIL -- as to
6 motion in limine No. 5: The expert may rely on spreadsheets
7 or other data when coming to their opinions and hearsay as
8 well.

9 The motion is denied. Halo argued that the allocated
10 costs are inadmissible because they're fixed costs that CDI
11 had to pay regardless of its infringing activity. CDI argues
12 that these costs are directly related to the infringing
13 products. Thus, it is a question of fact for the jury to
14 decide. Under the Copyright Act, the plaintiff is required to
15 present proof of the infringer's gross revenues, with the
16 burden on the infringer to establish any deductions for
17 expenses or to demonstrate that the profits introduced by
18 plaintiff were attributable to factors other than the
19 copyrighted work. That's *Roulo versus Russ Berrie & Company*.

20 The legal principle is that, one, costs which are
21 attributable to the infringing items may be deducted -- for
22 example, the cost of materials to make the product -- and two,
23 overhead that the company would have to pay regardless of any
24 infringement cannot be deducted -- for example, rent.

25 CDI should be allowed to present the opinion of their

1 expert that these costs are attributable to the infringing
2 products. Halo can challenge that opinion and its basis on
3 cross-examination. The challenges to the expert's reliance on
4 the spreadsheets should be denied for the same reasons as
5 motion in limine No. 5.

6 7, motion to exclude reference to or argument on
7 CDI's profit apportionment based on difference in profit
8 margins. The basis: Methodology is unreliable, no basis for
9 this damage apportionment in the law.

10 CDI argues that the courts have upheld cases that
11 have awarded minimal damages for defendant's profits. See
12 *Balsley versus LFP, Inc.*, which affirmed a jury verdict
13 awarding damages of 8.5 percent of gross profits of magazine
14 sales for use of plaintiffs's photograph; *Brown versus*
15 *McCormick* awarding damages against a movie production company
16 of 2.35 based on applying apportionment of 0.0001176 percent
17 of the total value of the movie attributable to the use of
18 plaintiff's copyrighted quilt to \$2 million production fee.

19 Granted. I find Halo's arguments on this motion in
20 limine persuasive. CDI attempts to argue that it should only
21 have to disgorge 12.8 percent of the profits that it made on
22 the infringing products. "An infringer is entitled to an
23 apportionment when the evidence is sufficient to provide a
24 fair basis of division so as to give the copyright proprietor
25 all the profits that can be deemed to have resulted from the

1 use of what belonged to him. The burden of proving an
2 apportionment is on the defendant." See *Roulo versus Russ*
3 *Berrie & Company*.

4 However, here, I have not seen evidence of a fair
5 basis for division. CDI relies on cases that allow
6 apportionment. However, the cases are inapplicable.
7 Apportionment is allowed where, for example, a defendant
8 infringed a story line used for a movie. However, a movie's
9 profitability is not only based on the story but also the
10 director, actors, etcetera, and thus, the damages should only
11 be the portion of the movie's profits based on the infringed
12 story.

13 Here, the furniture and lighting fixtures don't lend
14 themselves to apportionment. Without any evidence of a fair
15 division and with no applicable case law supporting it, the
16 motion should be granted.

17 Further, the methodology itself is questionable. The
18 12.8 percent margin is based on the fact that CDI's profits on
19 the infringing products had a 12.8 percent higher margin than
20 CDI's profits on the non-infringing products. However, based
21 on this methodology, if the margin between the two was zero,
22 CDI would be able to keep all of the profits it made on the
23 infringing products, which cannot be right.

24 8, motion to exclude argument as to CDI's costs
25 estimated by overall company margin. Basis: Methodology is

1 unreliable. The arguments go to the weight of -- this is
2 CDI's position. The arguments go to the weight of the
3 evidence, not its admissibility. This is a question of fact
4 for the jury to decide.

5 The ruling is that that motion is denied, the same
6 reason as motion in limine Nos. 5 and 6. CDI may put evidence
7 of per-unit cost before the jury. CDI bears the burden to
8 show that the costs are attributable to the infringing
9 products and are not fixed costs that CDI would have to pay
10 regardless of selling the infringing items. Whether the cost
11 is attributable to the infringing product -- variable cost --
12 or a fixed cost is a question of fact for the jury.

13 9, motion to exclude reference to or argument on the
14 prosecution histories of Halo's asserted intellectual property
15 rights before the copyright office. The same arguments as
16 motion to strike, 1 -- this is CDI's position -- falls under
17 the public records exception for hearsay; and two, it is
18 relevant to show the copyright office's opinion of the works.

19 Reserve ruling. It depends on why CDI is bringing in
20 the evidence. Whether the products are copyrightable was
21 decided in the Court's summary judgment ruling. Thus, the
22 copyright office's opinions on copyrightability are
23 irrelevant. However, the fact that the copyright office
24 denied registration may go to CDI's willfulness. The evidence
25 should be admitted for this purpose.

1 Hearsay: We previously ruled on the motion to strike
2 that the copyright office's correspondence was admissible
3 under the public records exception. See 803(8).

4 Now, CDI's motions in limine. It's a *Daubert* motion.
5 *Daubert* motion to exclude Mr. Pakter's opinions in three
6 categories of damages. Category B: Lost profits from Halo's
7 discontinued products. CDI argues that there's no evidence
8 that Halo discontinued the products because of the
9 infringement and, therefore, damages from its decision to
10 discontinue the product is improper. There's also arguments
11 that this double-counts damages. Halo does not intend to
12 present arguments at trial on this issue. Accordingly, the
13 Court grants the motion without objection.

14 A *Daubert* motion to exclude Mr. Pakter's opinion in
15 three categories of damages: Category C, profits from CDI's
16 sales from non-infringing products. CDI argues that the
17 profits earned on its non-infringing products are not related
18 to infringement and, thus, should be excluded. CDI states
19 that the case law does not support an award of damages on
20 profits on non-infringing sales.

21 Halo argues that CDI established its base of
22 distributors in the U.S. using the infringing products and,
23 thus, CDI's profits on the non-infringing products were
24 directly attributable to the infringement.

25 Denied without prejudice. In *Bucklew versus Hawkins*

1 allows the plaintiff to recover profits that an infringer made
2 from non-infringing products if those products are
3 attributable to the infringement. Whether those profits are
4 attributable here is a question of fact. It is Halo's burden
5 to establish these facts at trial. See *Andreas versus*
6 *Volkswagen* where the plaintiff had the burden to demonstrate a
7 nexus between the infringement and indirect profits.

8 CDI argues that the case law does not support an
9 award of damages based on CDI's profit on non-infringing sales
10 unless the products were bundled. It distinguishes
11 *Sunset Lamp*, arguing that *Sunset Lamp* allowed plaintiff's lost
12 profits to include non-infringed products from the same
13 product line, not defendant's profits from non-infringing
14 sales.

15 Halo's response is persuasive. The reasoning of
16 *Sunset Lamp* and *Bucklew* appear to allow profits made on
17 non-infringing products if there is evidence that those
18 profits are attributable to the infringement. Further, CDI is
19 unable to point to any case law that bars these types of
20 damages as a matter of law. Thus, it is a question of fact
21 for the jury whether CDI's sales in the U.S. of non-infringing
22 products are attributable to the infringement.

23 If Halo does not establish sufficient facts at trial
24 for a reasonable jury to find that these profits are
25 attributable to the infringement, then this ruling would be

1 revisited.

2 *Daubert* motion to exclude Mr. Pakter's opinion on
3 Category D: CDI's increased profitability based on using
4 Halo's designs to break into the U.S. market.

5 CDI argues that the assumption that any revenue
6 growth exceeding the industry average was attributable to
7 CDI's infringement is unsupported by the evidence and the law.
8 CDI argues that no court in this circuit has awarded lost
9 profits based on defendant's increased profitability or
10 enhanced good will. CDI relies on *Burns versus Imagine Films*
11 *Entertainment*, finding profits in non-infringing products from
12 the same product line, not defendant's profits for
13 non-infringing sales.

14 Halo's response is persuasive, however. The
15 reasoning of *Sunset Lamp* and *Bucklew* appear to allow profits
16 made on non-infringing products if there is evidence that
17 those products -- excuse me.

18 Denied without prejudice. Excuse me. This was a
19 close question. Although case law frequently finds these
20 types of damages too speculative -- see case law cited by
21 CDI -- Halo has alleged sufficient facts to be proved at trial
22 showing that CDI's infringements were related to establishing
23 itself with important customers in the U.S. market.

24 Halo states that CDI's revenue growth was negative,
25 and then the year after using Halo's designs, its revenue

1 growth jumped up. Halo makes a compelling point that there
2 are inferences that the infringement was a substantial
3 contributor to CDI's growth. I find that there is enough of a
4 logical connection to put these facts to the jury.

5 Additionally, although CDI cites to several cases
6 finding these damages too speculative, it cites to no case
7 barring these damages as a matter of law. If Halo does not
8 establish sufficient facts at trial for a reasonable jury to
9 find that these profits are attributable to the infringement,
10 then this ruling should be revisited.

11 All right. So to summarize, motions in limine -- the
12 plaintiff's motion in limine No. 1 is denied, No. 2 is
13 granted, No. 3 is granted, No. 4 is granted, No. 5 is denied,
14 No. 6 is denied, No. 7 is granted, No. 8 is denied, and No. 9
15 is, ruling is reserved. And the *Daubert* motion, category B,
16 lost profits from Halo's discontinued products, is granted
17 without objection.

18 Category C, profits from CDI's sales from
19 non-infringing products is denied without prejudice. Category
20 D, CDI's increased profitability based on using Halo's designs
21 to break into the U.S. market is denied without prejudice.

22 So that's -- you were going to work on a statement of
23 the case. Have you got one?

24 MR. HARRIS: Your Honor, on behalf of plaintiffs, we
25 do have a statement. There is one or two areas of --

1 requiring resolution by the Court, but we believe we're very
2 close on something. We can present it.

3 THE COURT: Okay. I would suggest that the statement
4 of the case should be as far as possible -- more, just,
5 educational rather than -- so what the case is about.

6 MR. HARRIS: Right.

7 THE COURT: But I -- if you have some competing
8 versions, I'm happy to look at them.

9 (Pause.)

10 MR. HARRIS: In the spirit of cooperation, we're
11 sharing one copy here, Judge.

12 THE COURT: All right. So let me read it.

13 MR. WARR: Your Honor, the redline language is
14 language that CDI added to what Halo had prepared. And the
15 highlighted language, I think, identifies Halo's concerns with
16 the language we have provided.

17 MR. HARRIS: That's correct, the yellow bold. We're
18 okay with the redlines, underlined, and the deletions.

19 THE COURT: The yellow bold is --

20 MR. HARRIS: The yellow bold, we do not agree with.
21 For example, there's mention there now that defendant CDI is a
22 Montreal-based designer and wholesaler. Well, that's what
23 this case is about. That's argumentative as to whether, in
24 the circumstances of this case, they were a designer at all,
25 so we don't believe that that was appropriate.

1 And what we were doing at the end there is, we were
2 just cleaning up the language. It should read, "Copyright
3 rights infringed copyright." It should read "copyright
4 rights," and it should talk about the patent and trademark
5 infringement as well as infringement of Halo's copyright
6 rights that you may find occurred. Remember, we're addressing
7 the damages for all the rights, not just some of them.

8 MR. WARR: We struck it believing it was redundant
9 with some of the language that appears earlier in the case
10 description, your Honor, that talks about the patent rights,
11 trademark rights, and copyrights.

12 THE COURT: The first one, how about this: Defendant
13 CDI is a Montreal-based -- let's see -- furniture wholesaler
14 and contends that it is a designer as well.

15 MR. WARR: That would be acceptable.

16 MR. HARRIS: I'm sorry, your Honor? Designer --

17 THE COURT: "Is a wholesaler and contends that it is
18 a designer as well." And the last part, it seems to me that
19 would be okay because it's just telling what the -- you could
20 have a line of what Halo's -- or what CDI's position is.

21 MR. HARRIS: Your Honor, we have no problem with the
22 contention language on the first part. With regard to the
23 second part, the last, very last sentence in yellow, is it the
24 Court's position that it's okay to leave it in?

25 THE COURT: "To receive for the patent and determine

1 what amount of damages Halo is entitled to receive for patent
2 and trademark infringement as well as for" -- let's see.
3 Which one -- the patents are conceded; is that right?

4 MR. WARR: The patents and trademark --

5 MR. HARRIS: Yes.

6 MR. WARR: -- are stipulated, your Honor.

7 MR. HARRIS: But not the damages.

8 MR. WARR: But not the damages.

9 THE COURT: Yes. I think -- okay.

10 MR. HARRIS: This relates only to damages.

11 THE COURT: All right. I think that's -- the way it
12 reads is all right. I don't have any --

13 MR. HARRIS: Very well, your Honor. Thank you.

14 THE COURT: So then the difference would be, we leave
15 in the agreed changes, and the designer -- "is a Montreal-
16 based wholesaler of furniture" -- I guess it's furniture,
17 isn't it?

18 MR. WARR: If we use "furniture" in a broad sense to
19 encompass lighting products as well, your Honor.

20 THE COURT: Yes. Furniture and lighting products,
21 "and contends that it is a designer as well."

22 MR. HARRIS: That's fine, your Honor.

23 THE COURT: All right.

24 MR. HARRIS: And then finally, we've come in with
25 voir dire questions. All of these were submitted by

1 plaintiff. The redline is what was added by defendants. And,
2 your Honor, the only objection that we've got is at item 23
3 where they ask, "Do you believe competition is good," which
4 is -- gives a pretty good idea of where they're going with
5 that.

6 THE COURT: I don't -- I have made a consistent
7 ruling in the past that I don't ask for their beliefs and
8 concepts. My -- I usually limit my questions to issues of
9 fact concerning the jurors' background rather than their
10 beliefs, other than the fact that -- let me just see what
11 you've got here. I'm not going to give all these anyway.

12 MR. HARRIS: Thank you, your Honor. Well, with the
13 removal of 23, we have -- plaintiff has no objection to the
14 remaining ones.

15 THE COURT: "25, would you prefer to buy American-
16 made products instead of imported products," is that a big
17 issue in the case?

18 MR. HARRIS: It is not, your Honor. All the products
19 are made outside of the U.S.

20 THE COURT: Okay. I'm not going to give that one. I
21 don't see where that's important unless it's an issue in the
22 case.

23 MR. HARRIS: Do you believe that's an issue here?

24 MR. WARR: No, your Honor, not as to the products in
25 the case, but we just thought it might add some --

1 THE COURT: I'm going to whittle this down.

2 MR. HARRIS: Thank you.

3 THE COURT: If at the conclusion, I've left something
4 out you think is quite important, then I'd be happy to add
5 additional questions.

6 All right. When will the jurors be ready?

7 THE CLERK: They're ready now, Judge.

8 THE COURT: They're ready?

9 THE CLERK: Yes, sir.

10 MR. HARRIS: Your Honor?

11 THE COURT: Yes.

12 MR. HARRIS: Will the parties be receiving sheets
13 with the addresses of the jurors in advance?

14 THE CLERK: Just the names.

15 THE COURT: What?

16 THE CLERK: Just the names, not addresses.

17 THE COURT: I don't think we do that. I will ask
18 them what their address is. Basically, I don't ask them
19 specifically, you know, what their street address is but the
20 geographic area in which they live.

21 MR. HARRIS: The town?

22 THE COURT: Yes, the town, or Chicago, which side,
23 south side of Chicago, north side of Chicago. Some of them,
24 particularly true in a criminal case, they're very reluctant
25 to disclose their address, so -- now, the answer is they will

1 not -- but I will ask them where they live generally.

2 All right. Let me take a look at these.

3 All right. Do you want -- I'm going to take a few
4 minutes and work out these questions, voir dire questions.

5 MR. WARR: Your Honor, may I address one other issue?

6 THE COURT: Sure.

7 MR. WARR: Obviously, the Court spent a lot of time
8 preparing its summary judgment opinion the other day, and we
9 are curious as to what, if any, use would be permitted during
10 examination of witnesses, especially with respect to how the
11 Court dealt with what are the protected expressions in the
12 products at issue in the litigation.

13 MR. HARRIS: Your Honor, we don't believe that
14 piece-mealing what the Court relied upon is appropriate at all
15 for --

16 THE COURT: I agree. I don't think you should quote
17 from my opinion.

18 MR. WARR: Okay. Thank you.

19 THE COURT: That's the law rather than the facts, and
20 we will instruct them as to the law at the conclusion of the
21 case. So no, I don't think you should take a sentence out of
22 the opinion and put that forward as gospel truth.

23 MR. HARRIS: Thank you, your Honor.

24 MR. WARR: Thank you, your Honor.

25 THE COURT: That's much to do with context that you

1 may very well be correct, but I think the time to do that is
2 the instructions.

3 MR. HARRIS: Thank you, your Honor.

4 MR. WARR: Thank you, your Honor.

5 THE COURT: All right. Anything else?

6 MR. HARRIS: Do we have anything else? Jacqueline?
7 Barry?

8 On behalf of plaintiffs, your Honor, we're ready to
9 go.

10 MR. WARR: Nothing further, your Honor.

11 THE COURT: All right. Do you want to get the
12 jurors? I'm going to work on the questions in the back room,
13 so we'll stand at ease.

14 (Recess from 10:07 a.m. to 10:31 a.m.)

15 (Proceedings heard which are not herein transcribed.)
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C E R T I F I C A T E

I, Judith A. Walsh, do hereby certify that the foregoing is a true and accurate excerpt transcript of the proceedings had in the above-entitled case before the Honorable HARRY D. LEINENWEBER, one of the judges of said court, at Chicago, Illinois, on January 22, 2018.

/s/ Judith A. Walsh, CSR, RDR, F/CRR April 4, 2018

Official Court Reporter

United States District Court

Northern District of Illinois

Eastern Division